IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1541 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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STATE OF GUJARAT - Appellant(s)
Versus
ARUNKUMAR HIRALAL SUTHAR - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.03.90 passed by the Motor Accident Tribunal No. 3, Ahmedabad in MACP No. 113 of 1985 whereby the Tribunal awarded an amount of Rs. 56,528/- by way of compensation payable by the original opponent to the original claimant with interest at the rate of 12% per annum from the date of application till realisation.

2. The original claimant-present respondent had filed claim petition claiming compensation to the tune of Rs. 1,00,000/- in respect of the vehicular accident which took place on 08.11.1983 near the Sabarmati Toll Naka. While the original claimant was inspecting the work being done near the S.T bus stand a brown coloured S.R.P van resembling S.T bus came from behind and knocked down the original claimant-present respondent. The original claimant received serious injuries resulting into certain disabilities. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal has erred in holding that the said accident occurred due to rash and negligent driving of the vehicle by the driver of the present appellant when the vehicle was not involved in the accident. He has further contended that the Tribunal has wrongly awarded Rs. 56,528/- by way of compensation to the original claimant and therefore the award calls for interference by this Court.

4. Heard learned counsel and gone through the

materials placed on record including the award of the Tribunal. The Tribunal while deciding the issue of contributory negligence in para 5 of the award has gone into the evidence in detail and has apportioned the contributory negligence between the van and the claimant at 80% and 20%.

4.1 As a result of perusal of records, it is borne out that the road on which the accident happened was about 40' wide and place of accident as shown in the panchnama is at a place 12' away from the western edge of the said road. Keeping in mind the fact that the pedestrian was walking at about 12' from the edge, he cannot be termed to be a diligent and careful pedestrian. However, the driver of the vehicle is to be considered to be more negligent as he could have possibly gone towards the east side and could also even cross the mid line in view of the fact that there was no other traffic on the road but he did not do that.

4.2 As far as the involvement of the S.R.P vehicle is concerned, the Tribunal has in para 11 rightly observed that the State could not provide any

evidence on record to substantiate their claim of non-involvement of the vehicle. I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and see no reason for interference in the award.

5. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. No order as to costs.

(K.S. JHAVERI,

J.)

Suresh*